O/Defence of India (R) 52

1952 K File No. 38/52

Legal Dept.

G. BRANCH

P-6/E

Subject:— opinions on the Defence of India Rules

O/Defence of India Rules/52

File No. 38/52

Gen. 104-e.

C O N T E N T S .

Legal Department File No. O. Defence of India Rules/1952

Sr.No.	R.I./O. No.	Subject	Pages
		Opinions on the Defence of India's Rules.	
1.	G-155 12/4/52.	Question (1) whether, in view of the fact that the Defence of India rules lapsed long ago, the Validity of the Oilseeds (Forward Contracts Prohibition) Order, 1943, and the Vegetable Oils and Oil Cakes (Forward Contracts Prohibition) Order, 1944 can be challenged on the ground that they were not published according to the provisions of Rule 119 of the said Rules, or, to put it differently, whether, in every case launched for breach of the said Order, the Prosecution has to prove that they were so published, and if so, (2) Whether these Orders were in fact published as required by Rule 119.	1-4

SSD.
17.7.56. 5c.

Office of the R. L. A.

The following Questions raised by the District Magistrate, Kaira, Have been referred to this Department for advice by the Finance Department.

(1) Whether, in view of the fact that the Defence of India Rules lapsed long ago, the validity of the Oilseeds (Forward Contracts Prohibition) Order, 1943, and the Vegetable Oils and Oil Cakes (Forward Contracts Prohibition) Order, 1944 can be challenged on the ground that they were not published according to the provisions of Rule 119 of the said Rules, or, to put it differently, whether, in every case launched for breach of the said Order, the prosecution has to prove that they were so published, and if so,

(2) Whether these Orders were in fact published as required by Rule 119.

Question No. 1. - Both the Oilseeds (Forward Contracts Prohibition) Order, 1943 and the Vegetable Oils and Oil Cakes (Forward Contracts Prohibition) Order, 1944 were issued under Rule 81(2) of the Defence of India Rules and now continue in force so far as they relate to Edible Oils and Oilseeds under the Essential Supplies (Temporary - Powers) Act, 1946. The View taken in the Finance Department note that if the orders were not published according to Rule 119(1) then the orders were not operative even when the Defence of India Rules were in force and therefore could not be continued under the Essential Supplies (Temporary Powers) Ordinence or the Act, is not Correct. Sub-rule (13) (ii) of Rule 129 of the Defence of India Rules provides that failure to comply with sub-rule (1) of Rule 119 shall not affect the validity of the Orders. Both the Orders were therefore, validity continued under the Essential Supplies (Temporary Powers) Act so far as they related to edible oils and oilseeds. Fruther it has been held by the High Court of Bombay (Cf. Cr. Revn. appln. No. 885 of 1951) that when such orders are continued under the Essential Supplies (Temporary Powers) Act

Act they are deemed to have been made under the Act and as there is no section in that Act analogous to Rule 119 it was not necessary to prove that the accused had the knowledge of the order or that it was published as required by rule 119. For the same reasons the view taken by the District Superintendent of Police, Kaira, that as the orders were not published in Kaira District they were inoperative and cannot be made alive by subsequent legislation is not correct. Non-compliance with sub-rule (1) of Rule 119 did not have the effect of invalidating the orders and the orders continue under the Essential Supplies (Temporary Powers) Act, As stated above.

Regarding Question No.2 this Department has no infirmation.

Id/- .....
18/4

Remembrancer of Legal Affairs.

U.R. to F.D., No. G- 155, dated the 12th April 1952.

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16.7.1956. 4c.

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